



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS**

**COURT OF KENYA AT NAIROBI**

**CAUSE NO. 316 OF 2014**

**KENNEDY SIKINYI NAMAI ..... CLAIMANT**

*VERSUS*

**POLYPIPES LIMITED STEEL DIVISIONS ..... RESPONDENT**

Claimant in person

**JUDGMENT**

1. Memorandum of Claim dated 4<sup>th</sup> March 2013 was filed on the same date. The Claimant seeks payment of terminal benefits set out as follows;

1. one month salary in lieu of notice in Kshs.9,204;
2. accrued leave – Kshs.115,970.40;
3. service pay – Kshs.82,836.00;
4. total – 208,010.40; and
5. compensation for alleged unlawful and unfair termination of employment.

**Facts of the Claim**

2. The Claimant was verbally employed as a Machine Operator by Mr. Diamond Ramji, a Director of the Respondent on 16<sup>th</sup> February 1995. The Claimant was paid a daily wage of Kshs.354 which translated to a monthly salary of Kshs.9,204.00.

3. The Claimant worked continuously until 17<sup>th</sup> January 2013 when the Respondent terminated the Claimant's services without notice or payment of terminal benefits.

4. The Claimant told the Court in his oral testimony that he worked 6 days a week from 7 a.m. in the morning to 7 p.m. in the evening.

5. A personnel officer named Mr. Chege verbally terminated his employment. He was not given a letter of termination. The wages were paid weekly. Twenty (27) employees had their employment terminated on that day.

6. The claimant told the Court that he was not given annual leave for the entire period he worked. Any employee who requested for leave was threatened with dismissal.

7. The Claimant and his colleagues were not registered with NSSF and NHIF and no deductions were made on their salary. Only union dues were deducted.

8. The Claimant made a demand letter through Kituo Cha Sheria.

He seeks payment as prayed and compensation for the unlawful and unfair termination.

9. The Respondent was served with the summons and Okong'o Wandago and Co. Advocates filed a Notice of appointment on 27<sup>th</sup> March 2014.

10. The matter was fixed for mention on 16<sup>th</sup> June 2014 and a notice dated 9<sup>th</sup> June 2014 was served on the Respondent and an Affidavit of service was filed on 16<sup>th</sup> June 2014.

Both parties did not appear in Court and the matter was stood over generally.

11. The Claimant served the Respondent with a mention notice dated 18<sup>th</sup> June 2014 to appear in Court on 23<sup>rd</sup> June 2014.

The notice was filed in Court on 23<sup>rd</sup> June 2014 duly received by the Respondent.

12. The mention date did not materialize and a further notice was issued to the Respondent to appear at the Registry on 28<sup>th</sup> November 2014 at 10 a.m. with a view to fix a hearing date. The notice was filed on 24<sup>th</sup> November 2014.

13. The Claimant took a hearing date of 29<sup>th</sup> January 2015 at 9 a.m. on 28<sup>th</sup> November 2014, but the Respondent did not appear.

14. A hearing notice dated 15<sup>th</sup> November 2014 was served on the same date on the Respondent and a return of service sworn on 18<sup>th</sup> December 2014 was filed on 20<sup>th</sup> January 2015.

15. The Respondent did not appear for hearing on 29<sup>th</sup> January 2015 and the matter proceeded for hearing exparte.

16. The Notice of Appointment of Advocates filed on 1<sup>st</sup> April 2014 was not served on the Claimant since no Affidavit of service is on record, however the Claimant served the Respondent directly at the office.

17. The Claim by the Respondent remains undefended.

18. The Court has considered the pleadings, the annexures thereto and the oral testimony by the Claimant and has reached the following conclusion of fact and law;

1. The Claimant though initially employed as a casual had converted into a permanent employee and worked continuously for a period of eighteen (18) years.
2. That because the Respondent treated the Claimant as a casual, it did not accord the Claimant annual leave or payment in lieu of twenty one (21) leave days per year provided under the Employment act.
3. The claimant was at all material times entitled to this benefit and the Court awards him as prayed.
4. The Claimant's employment was terminated without notice and with no reason assigned to it. The claimant is therefore entitled to payment of one (1) month salary in lieu of notice as prayed.
5. The Claimant was not registered with NSSF from the evidence adduced by the Claimant, it is apparent he was retrenched with twenty six (26) others for no fault at all.

19. The Claimant for both reasons is entitled to payment of service gratuity calculated at fifteen (15)

days salary for each completed year of service as prayed. The Court awards the Claimant accordingly.

20. Consequently, the Claimant is awarded Kshs.208,010.40 being Notice Pay, in lieu of accrued leave and service gratuity.

The Claimant is also awarded ten (10) months salary being compensation for the unlawful and unfair termination of employment since no valid reason was assigned to the termination, nor did the Respondent follow a fair procedure in affecting the termination. The compensation is in the sum of Kshs.92,040.00.

**Total award to the Claimant is Kshs.300,050.40.**

The award is payable with interest at Court rates from date of this judgment till payment in full.

The claimant is also awarded costs of the suit.

**Dated and Delivered at Nairobi this 8<sup>th</sup> day of May 2015.**

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**